

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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GENERAL COUNSEL

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Putnam)
Exchange and the Cisco)
Exchange.)

96-159

PETITION

DOCKET FILE COPY ORIGINAL

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Putnam exchange and the Cisco exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

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3. Exchanges involved: Putnam in the Abilene, TX LATA and Cisco in the Dallas, TX LATA;
4. Name of carriers: Putnam of Contel/GTE Southwest, Inc. and Cisco of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Putnam exchange has 111 access lines, and the Cisco exchange has 2,568 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Putnam customers returning ballots who voted in favor of ELC to Cisco: 93.00. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. *PRIMA FACIE* SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Putnam exchange and the Cisco exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

DOCKET NO. 14410

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE PUTNAM	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
CISCO	§	

**ORDER NO. 2
REQUIRING LOCAL EXCHANGE COMPANY
TO FILE BOUNDARY MODIFICATION**

On July 31, 1997, the Commission Staff, in light of the recent Federal Communications Commission's (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport boundaries (LATA) for the provision of expanded local calling service *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, recommended that SWBT file a request for a limited modification in accordance with the procedures outlined in §§23 & 24 of that order.

An interim order on community of interest for this petition was approved by the Commission on November 10, 1995, and SWBT was directed to file a request for waiver under the *Modified Final Judgment*.

SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined in the FCC order §§23 & 24, within 30 days of the effective date of this Order. In addition, within 10 days of the receipt of an order or notice from the FCC relating to this petitions, SWBT shall file such order or notice in this docket.



ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 4th DAY OF AUGUST, 1997

CONSOLIDATED ORDER

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§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

- DOCKET NO. 14151 *Petition for Expanded Local Calling Service from the Irene Exchange to the Corsicana Exchange*
- DOCKET NO. 14271 *Application of Southwestern Bell Telephone Company for Waivers of the Requirements of P.U.C. SUBST. R. 23.69 Related to the Deployment of ISDN Based Services*
- DOCKET NO. 14410 ✓ *Petition for Expanded Local Calling Service from the Putnam Exchange to the Cisco Exchange*

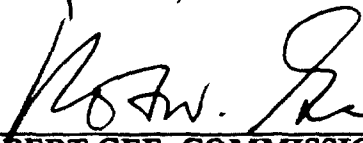
CONSOLIDATED ORDER

The Commission **ADOPTS** the attached findings of fact and conclusions of law and **ISSUES** the orders set out therein.

SIGNED AT AUSTIN, TEXAS on the 9th day of November 1995.


PUBLIC UTILITY COMMISSION OF TEXAS


PAT WOOD III, CHAIRMAN


ROBERT GEE, COMMISSIONER


JUDY WALSH, COMMISSIONER

ATTEST:


PAULA MUELLER
SECRETARY OF THE COMMISSION

1995 NOV 10 10 11 31
PUBLIC UTILITY COMMISSION

DOCKET NO. 14410

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
PUTNAM EXCHANGE TO
THE CISCO EXCHANGE

§
§
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§

PUBLIC UTILITY COMMISSION

OF TEXAS

INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on an evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

Background

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order requests non-optional "to and from calling" between the Putnam Exchange and the Cisco Exchange.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)

4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exists between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon))(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers, and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

Community of Interest Issue

10. On October 25, 1994, the Putnam Exchange filed a petition for ELCS between it and other exchanges, including the Cisco Exchange.
11. The Putnam Exchange is served by GTE, and it is in the Abilene LATA. The Cisco Exchange is served by SWB, and is in the Dallas LATA.
12. The parties to the proceeding are the petitioning Putnam Exchange, GTE, SWB, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.
13. The Putnam Exchange is contiguous with the Cisco Exchange.
14. An affirmative vote of 93 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Putnam Exchange to the Cisco Exchange.
15. Many residents of the Putnam Exchange are employed in the Cisco Exchange. There is a clothing factory, nursing home, and grocery store in Cisco that employ residents of the Putnam Exchange.
16. The Putnam Exchange does not have a hospital or other emergency medical facility. The nearest emergency medical center is the Cisco Medical Clinic located in the Cisco Exchange.
17. Residents of the Putnam Exchange rely upon merchants in the Cisco Exchange for most of their shopping and other economic needs. The offices of the gas, electric, and water utilities serving residents in the Putnam Exchange are located in Cisco. The closest major grocery store, drug store, lumber yard, feed store, and automotive repair to the Putnam Exchange are located in Cisco.

18. There is a community of interest between the Putnam Exchange and the Cisco Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Cisco Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality as a commercial and employment center, and commonality of medical facilities.

Informal Disposition

19. More than 30 days have passed since completion of the notice provided in this docket.

20. No protests, motions to intervene, or requests for hearing have been filed. No issues of fact or law are disputed by any party; therefore, no hearing is necessary

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.

2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).

3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.

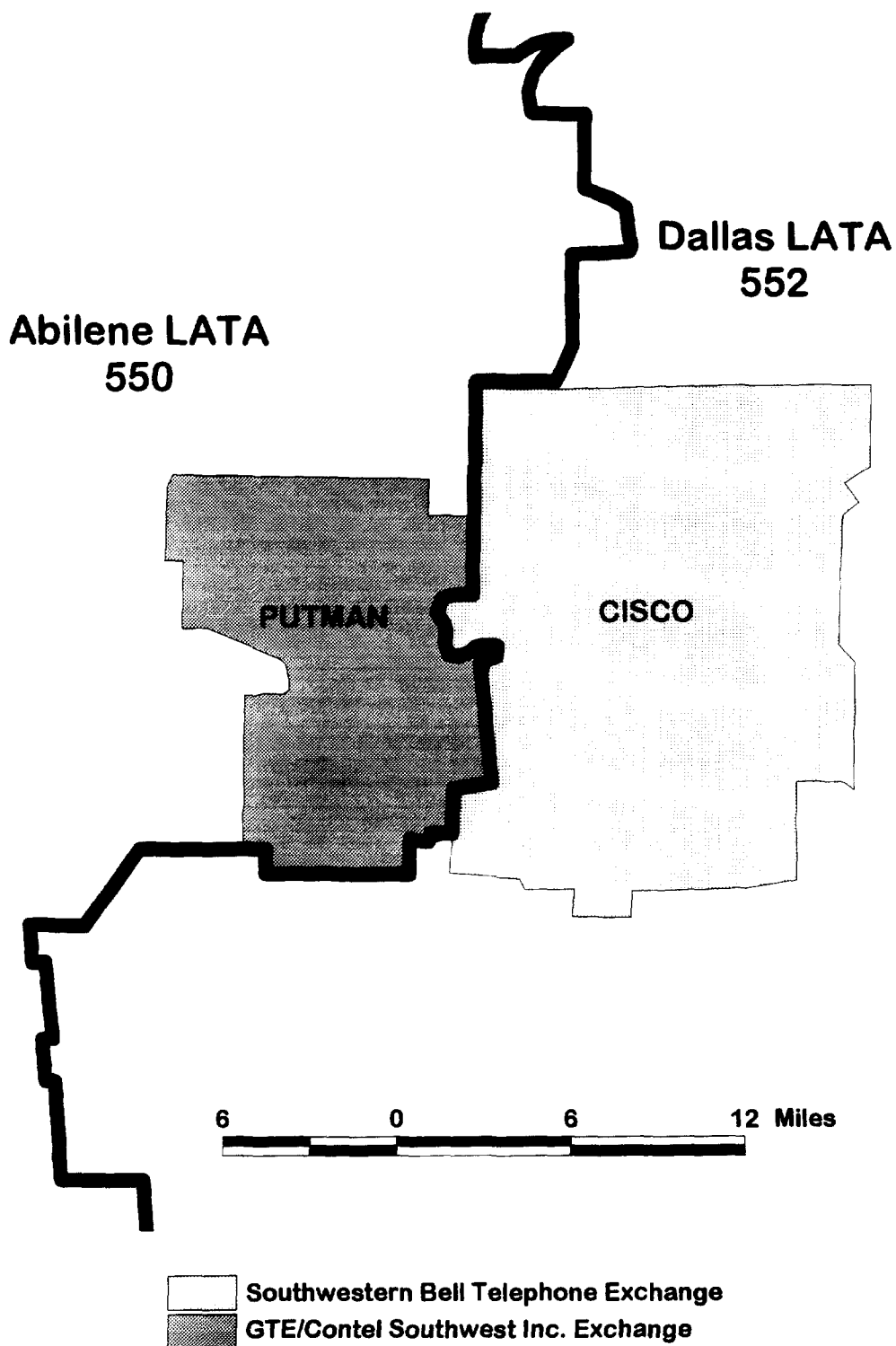
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 13, the petitioning exchange satisfies the requirement.

5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.
8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
11. The requirements of P.U.C. PROC. R. 22.35 have been met in this proceeding.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Putnam Exchange for expanded local calling service to the Cisco Exchange have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) and Southwestern Bell Telephone Company (SWB) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.

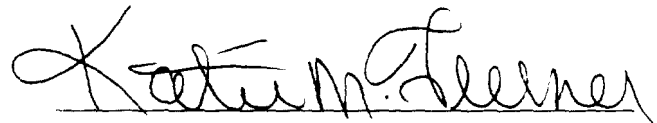
Putnam To Cisco



This document was produced by the Texas Exchange Carrier Relations organization of Southwestern Bell Telephone Company on 8/7/97, based on the best information it could obtain from other sources at that time. In addition, it is the Telephone Company's understanding that the data underlying the creation of this document may be subject to change. Southwestern Bell makes no representation as to the accuracy of the information provided to it and used to create this document.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701